

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, SEPTEMBER 29, 2009**

**5:45 P.M. SPECIAL COUNCIL MEETING (Closed Session)**-Conference with Legal Counsel- Existing Litigation pursuant to Government Code Section 54956.9(a), Name of case: Pfeiffer and Hansen vs. City of Sunnyvale and Palo Alto Medical Foundation, Santa Clara County Superior Court No. 109-CV-4182790 and Conference with Legal Counsel- Anticipated Litigation, Initiation of litigation pursuant to Government Code Section 54956.9(c); one potential case.

**7 P.M. COUNCIL MEETING**

**CALL TO ORDER**

**ROLL CALL**

**PRESENT:**

Mayor Anthony Spitaleri  
Vice Mayor Christopher Moylan  
Councilmember John Howe  
Councilmember Ron Swegles  
Councilmember Melinda Hamilton  
Councilmember David Whittum  
Councilmember Dean Chu

**ABSENT:**

None

**STAFF PRESENT:**

City Manager Gary Luebbers  
Assistant City Manager Robert Walker  
City Attorney David Kahn  
Director of Community Services David Lewis  
Director of Public Works Marvin Rose  
Superintendent of Arts and Recreation Nancy Bolgard Stewart  
City Clerk Kathleen Franco Simmons

**SPECIAL ORDERS OF THE DAY**

City Clerk Kathleen Franco Simmons presented the Oath of Office to the newly appointed board and commission members.

Mayor Spitaleri presented a proclamation declaring October 2009 as Breast Cancer Awareness Month to Bobbe Smirni and Charlie Olsen.

### **CLOSED SESSION REPORT**

Vice Mayor Moylan reported Council met in two closed sessions pertaining to: Government Code Government Code Section 54956.9(a) – Conference with Legal Counsel - Existing Litigation and pursuant to Government Code Section 54956.9(c) – Conference with Legal Counsel- Anticipated Litigation

Vice Mayor Moylan stated no action was taken on either item.

### **PUBLIC ANNOUNCEMENTS**

Councilmember Hamilton announced citizen volunteers are needed to help guide Santa Clara Valley Transportation Authority (VTA) services and policy issues.

Councilmember Howe announced the upcoming second council candidate forum and stated the League of Women Voters will also hold a candidate forum in the Council Chambers. All candidate forums are broadcast live on the local cable channel KSUN (Channel 15) and on the City's website at: [webcasting.inSunnyvale.com](http://webcasting.inSunnyvale.com). Councilmember Howe explained if an additional last night forum is deemed necessary by the moderator, it will be held on November 2, 2009 in the Council Chambers. Members of the public may email any suggestions they have for candidate questions to the moderator at: [svcandidate@aol.com](mailto:svcandidate@aol.com).

Vice Mayor Moylan announced that 17 year old Nicholas Dobkin from Homestead High won the College of San Mateo, KCSM TV's "Spotlight High School Film Festival" for best animation for his short film, Somnium. Dobkin was selected as the winner out of 81 entries from six high schools.

Rich Haffner, marketing director of California Theatre Center, announced upcoming musicals and plays scheduled for the center.

Trudi Ryan, as President of Fremont High School Band Boosters, and Patty Del Rosario, Vice President of Instrumental for Fremont Band Boosters, announced the upcoming the Fremont Union High School District Band Exhibition.

### **CONSENT CALENDAR**

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded to approve the Consent Calendar

VOTE: 7-0 (Councilmember Swegles absent)

**1.A. Approval of Council Meeting Minutes of September 1, 2009**

**1.B. Approval of Information/Action Items – Council Directions to Staff**

### **Fiscal Items**

- 1.C.     RTC 09-248     List of Claims and Bills Approved for Payment by the City Manager – List Nos. 469, 470, 471 & 472**

Staff Recommendation: Review the attached lists of bills.

- 1.D.     RTC 09-243     Appropriation of Emergency Management Performance Grant Funds and Approval of Budget Modification No. 7**

Staff Recommendation: Approve Alternative 1: Approve Budget Modification No. 7 to accept and appropriate the Emergency Management Performance Grant Funds monies for the local emergency preparedness efforts.

- 1.E.     RTC 09-247     Carryover of Council Technology Funds from FY 2008/09 to FY 2009/10 and Approval of Budget Modification No. 9**

Staff Recommendation: Approve the carryover of \$2,600 in technology funds in accordance with Council Policy 7.3.13, and Budget Modification No. 9.

- 1.F.     RTC 09-252     Approval of Budget Modification No. 8 to Appropriate Traffic Safe Communities Network Grant Funds**

Staff recommendation: Adopt Budget Modification No. 8 to appropriate the Traffic Safe Communities Network grant funds for the installation of pedestrian countdown signals at Hollenbeck Road and Danforth Drive.

### **Personnel**

- 1.G.     RTC 09-241     Amendment of the City's Contribution for CalPERS Medical Insurance for Management, SEA and SEIU Annuitants (Retirees)**

Staff Recommendation: Approve Alternative 1: Adopt the resolution amending the City's contribution for medical insurance with CalPERS in compliance with the Public Employees' Medical and Hospital Care Act, and to amend the Salary Resolution to reflect the change in contribution.

### **Contracts**

- 1.H.     RTC 09-240     Grant Agreement with Sunnyvale Community Services for Implementation of a Homelessness Prevention and Rapid Re-Housing Program in Sunnyvale**

Staff Recommendation: Approve the grant agreement with Sunnyvale Community Services for a sub-recipient grant of \$495,486 to implement the HPRP program in Sunnyvale, and direct the City manager to execute the contract by September 30, 2009. The Agreement includes a schedule of performance which will ensure that the City meets the HUD deadlines for expenditure of HPRP funds over the three year term.

**Contracts: Sunnyvale Works!**

**1.I. RTC 09-253 Award of Sunnyvale Works! Bid No. F0908-15 Concrete Sidewalk, Curb & Gutter Replacement - 2010 CDBG**

Staff Recommendation: Award a contract in the amount of \$448,860 to Nor-Cal Concrete, Inc., for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met. Approve a project contingency in the amount of \$44,886.

**1.J. RTC 09-254 Award of Sunnyvale Works! Bid No. F0907-05 Storm System Improvements Taylor Avenue and McKinley Avenue**

Staff Recommendation: Award a contract in the amount of \$324,000 to Peak Engineering, Inc., for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met; and approve a project contingency in the amount of \$32,400.

**Other Items**

**1.K. RESOLUTION Adoption of a Resolution Summarily Vacating a 10-foot Wide Public  
RTC 09-246 Utility Easement and a 5-foot Wide Wire Clearance Easement at  
1250 Kifer Road**

Staff Recommendation: Adopt the resolution vacating a 10-foot wide Public Utility Easement and a 5-foot wide Wire Clearance Easement at 1250 Kifer Road; and authorize the city clerk to cause a certified copy of the resolution to be recorded with the county recorder's office.

**1.L. ORDINANCE Adoption of Ordinance No. 2902-09 Amending the Precise Zoning  
No. 2902-09 Plan, Zoning Districts Map, to Rezone 25 Parcels Surrounded by  
Bobwhite Avenue and Bobolink Circle, APN Nos. 309-02-020 Through  
309-02-044, From R-0 (Low Density Residential) District to R-0/S (Low  
Density Residential/Single-Story Combining) District**

Staff Recommendation: Council approve the second reading of Ordinance No. 2902-09.

**STAFF RESPONSES TO PRIOR PUBLIC COMMENTS**

City Manager Gary Luebbers provided a report regarding concerns over Orchard Gardens and the condition of the park. City Manager Luebbers stated that the park is inspected on a daily basis and is maintained the same as all the other parks in the City. Staff did not find any homeless encampments at the park. He reported staff agreed with a previous speaker's concern over a barbecue area located to close to his house and the barbecue will be moved. City Manager Luebbers stated staff will continue to closely monitor the area during the park transition.

City Manager Luebbers provided a report in response to prior comments on public noticing and explained that staff goes beyond the legal noticing requirements for land use and financial issues. He stated the City will continue to notice the public on any study issues to the best extent that staff feels is necessary. At any time Council feels an issue needs extensive noticing, staff will take appropriate action.

City Manager Luebbers provided a report in response to concerns over non-payment from REEF Corporation to the subcontractors at the Town Mall. City Manager Luebbers explained that foreclosure proceedings on the property have been initiated and provided that any funds become available, the distribution of funds will be decided by a judge within the court system.

City Manager Luebbers reported that the American flag presented to the City by Councilmember Otto Lee has been framed for display and will be placed in a prominent place within City Hall.

### **PUBLIC COMMENTS**

Tap Merrick stated the City awarded Hexagon a contract incorrectly, because they turned in their bid too late and it was past the deadline. Merrick stated his other issue was in regard to Vice Mayor Moylan's threat of a lawsuit against Merrick. Merrick requested Council censure Vice Mayor Moylan for his actions.

Michael Flores stated he attended the State of the City event and expressed concern over the cost of the event. Flores played an electronic email voicing concerns about the City. Mayor Spitaleri requested staff provide a report of the costs of the State of the City event at the next meeting.

Arthur Schwartz stated a dangerous intersection exists which needs corrections such as a lighted crosswalk and requested the intersection issue be addressed as soon as possible.

### **PUBLIC HEARINGS/GENERAL BUSINESS**

#### **2. RTC 09-245 Theatre Use Policies & Practices (Study Issue)**

Superintendent of Arts and Recreation Nancy Bolgard Stewart provided the staff report and presented a correction to the chart on page 15 of the staff report. The chart incorrectly states that the City of Saratoga limits the time a production may run to three weeks when in actuality, the City of Saratoga allows for various theatre times for productions.

Councilmember Swegles verified with Superintendent Stewart that staff has met with both theatre groups.

Councilmember Whittum inquired if staff had any ideas about establishing a second theatre space in Sunnyvale. Superintendent Stewart stated a previously deferred study issue on this subject will be coming to Council for ranking in a few months. The proposed study issue would explore the possibility of another theatre venue downtown.

Councilmember Hamilton verified with Superintendent Stewart that cities typically do not supply alternative rehearsal space because that is a task left up to the organization to arrange. She stated the City of Sunnyvale supplies alternative rehearsal space if there is a conflict with the theatre. Stewart clarified that the seven weeks listed in the report's chart is the actual on-stage rehearsal time.

Public hearing opened at 7:48 p.m.

Daniel Rich, Sunnyvale Community Players (SCP), expressed support for leaving things as they are because it has been working for 40 years. Rich stated he does not support Alternative 8 and is not sure the theatre could survive if that option passed because of the manner in which it would affect their budget. Rich spoke of the theatre's importance to the community for both youth and adults.

Vice Mayor Moylan stated he co-sponsored this study issue because of the concerns he has heard regarding having to strike the set after every show. Vice Mayor Moylan verified with Rich that SCP would benefit from being able to leave their sets up; however, Rich is not certain that both theatre groups would receive benefit.

Vice Mayor Moylan stated the original question he attempted to answer with this study issue was whether the theatre groups would be better off trading theatre time after several weeks rather than after several hours. Vice Mayor Moylan stated his recommendation is Alternative 5 and he is looking for any input from the public regarding this option.

Councilmember Swegles verified with Rich that if SCP could not operate in Sunnyvale, they would not necessarily have another option for their performances and probably would have to disband.

Councilmember Whittum verified with Rich that Alternative 5 overall would hurt both groups. Rich explained that it would reduce the amount of time the other group could be in the theatre and SCP would possibly need to reduce the number of performances as well.

Dan Schinski, board member of SCP, spoke of the benefits of SCP to the community. Schinski requested Council consider the cultural and educational benefits SCP offers to the City and stated it is his hope that any decision Council makes will not adversely affect the quality of the performances or financial viability of the theatre.

Jaclyn Blythe, actor with California Theatre Center (CTC), requested that CTC continue to be given the time and space to work. Blythe explained that if changes are made, CTC will no longer be able to offer the quality of theatre they do currently. Blythe expressed concerns over any changes.

Councilmember Chu verified with Blythe that all of the CTC actors come from out of state.

Loryn Hatten, company manager for CTC, spoke in support of keeping things as they are. Hatten explained why Alternative 5 would not work for CTC. CTC administers three programs and the Family and School Series would be impacted the most because if the number of weeks for performances were reduced that would significantly reduce the revenues received for this program. Hatten stated her concern over the alternatives listed and how they will impact CTC's ability to continue to operate.

Vice Mayor Moylan verified with Hatten that the Family and School Series is a program in which schools and/or parents purchase tickets for their students to watch performances at CTC. Vice Mayor Moylan verified this program is a major portion of CTC's business model. Vice Mayor Moylan verified with Hatten that the reason CTC is a bit unique and does not want to be set up like other cities, is due to this special program they offer to children in the mornings, which works with the current scheduling they have.

Councilmember Hamilton verified with Hatten that finding space elsewhere as suggested in Alternative 7 would impact CTC as well due to the conditions of other facilities. The current location offers actors the proper conditions to rehearse the dance and gymnastics that they incorporate into their performances.

Councilmember Hamilton verified with Hatten that rehearsal time for a performance runs from 25 to 40 hours over a two or three week period. Rehearsal runs throughout the entire school season, as one show follows another, so the actors are in constant rehearsal. Performances are in the mornings with rehearsals in the afternoons.

Councilmember Hamilton verified with Hatten that two performances running at the same time is standard for CTC.

Councilmember Swegles verified with Director of Community Services David Lewis that the City park buildings are designed for meetings and classes and not for theatre rehearsals.

Catherine Thermond, board member with CTC, spoke in support of CTC and requested Council approve Alternative 1.

Valerie Meisner, teacher in Milpitas, stated she brings her students to CTC for performances. Meisner stated the Sunnyvale Theatre is perfect for children and the theatre is the perfect size to allow the children to see the production.

Robert Loftis spoke of the benefits that the theatre offers to the community and children.

Tara Martin-Milius, Vice Chair of the Arts Commission, stated the commission voted to approve Alternatives 1, 7, and 8.

Councilmember Hamilton verified with Martin-Milius that CTC was present at the Arts Commission meeting.

Councilmember Chu inquired whether Martin-Milius had a different opinion regarding the recommendation based on what she has heard from members of the public. Martin-Milius responded that a key item for the commission in deciding to vote as they did was the fact that the items they recommended were negotiable.

Aaron Weisberg, Vice President of the Sunnyvale Community Players, explained that the two theater groups have found a way to share one theatre space and provide quality theatre, mainly due to their hard work and dedication. Weisberg spoke of the challenges associated with rehearsing at separate locations. Weisberg requested Council not approve Alternative 7 and 8 because passage of those alternatives will affect the quality of the productions brought to the community.

Stefan Fisher, CTC company member, stated there is a possibility that if the alternatives were passed, the company would have to relocate to a location unknown at this point. Fisher provided an overview of what the impact to the community would be if CTC were to leave the area. Fisher expressed his support for Alternative 1.

Robert Greene stated he is proud that the City has supported the Arts and spoke of the need for these theatres groups to continue to operate within the community. Greene stated this arrangement is a win-win for all involved and he requested Council vote accordingly.

Jessica Salans stated she attended both CTC and SCP as a child and spoke of how important theatre is to the community.

Vice Mayor Moylan questioned Salans as to whether the facility is being run in the most optimum manner and whether there is anything that could be done to improve the quality of the productions for both groups. Vice Mayor Moylan stated the point of the study was not to displace anyone or decide whether theatre is good for the community or not. Salans responded that the groups have stated they are happy the way things are. Vice Mayor Moylan stated that since Salans was previously involved with both groups, he wanted to know if there is anything the City could do that would result in a net improvement. Salans responded that adding another theatre downtown would be ideal, but for now, things seem to be working very well and the only thing the City could do currently, would be to add additional performance space.

Dorian Martinka spoke about the benefits of CTC on the community. Martinka stated CTC travels to other communities that don't have theatres. Martinka encouraged Council to attend the next open house for CTC.

Brian Cilker, CTC Board Member, stated CTC has done a great job to control their finances in order to remain viable in these tough economic times. Cilker encouraged Council to be cautious with their decision.

Public hearing closed at 8:43 p.m.

Councilmember Swegles questioned what the cost would be to refurbish a park building to accommodate the theatre groups for rehearsals. Director Lewis stated all the park buildings are heavily used by the community and to designate a park building for such a use could detrimentally affect many other users and programs.

Councilmember Chu thanked all the speakers for sharing their thoughts.

Councilmember Hamilton verified with Director Lewis that an optimal floor for rehearsals should be made of wood, but that wood floors would not stand up to the other uses in the park buildings. Councilmember Hamilton inquired as to consideration of working with other organizations such as schools or churches to provide rehearsal spaces with more material-appropriate floors. Director Lewis responded that the City has not served as a coordinator for outside or non-agency rehearsal spaces but indicated the groups are free to talk to schools, churches or owners of vacant buildings to find suitable spaces.

MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded to approve Alternative 1: Maintain Sunnyvale Theatre's operating practices for scheduling as they currently exist with emphasis on operating and scheduling theatre to maximize attendance and revenue.

Vice Mayor Moylan stated he would be receptive to adding Alternative 7 if another Councilmember would like to include it as well. Vice Mayor Moylan stated he is not convinced that what is in place is the optimum situation; however, he is not hearing an overwhelming request from the groups to change anything. Vice Mayor Moylan stated it would be helpful in the future if community members could propose additional ways to evaluate programs.

Councilmember Chu stated he supports Alternative 1 and would support Alternative 7 in the future, but not presently due to the struggling economy. Councilmember Chu stated he is not aware of additional venues for rehearsal space that would be available without heavy modification and financial burden.

Councilmember Howe stated this has shown that the process has worked, people were very polite, and that staff was able to do what was asked in the best way possible with what they have to work with. He stated that it has shown there is a way of cooperating and commended staff for a job well done, the theater groups for the theater and Council for questioning the process.

Councilmember Swegles stated he will make an amendment to add Alternative 7, because it can be negotiated; however, he would like to have the groups strive for reducing rehearsal time.

FORMAL AMENDMENT: Councilmember Swegles moved and Vice Mayor Moylan seconded to include Alternative 7: Allow staff the flexibility to modify the amount of rehearsal time groups are allotted to allow the City to expand current program offerings and provide additional time for rental use by other community groups.

Councilmember Whittum stated he will oppose the amendment because the current users expressed that they are happy with their current situation and that their usage is optimum. Councilmember Whittum stated attempting to optimize may create a loss of one of the groups.

Councilmember Chu stated he is against Alternative 7 because, unless the City can provide an alternative venue for rehearsals, it is not a valid option and would jeopardize the financial stability of both groups.

VOTE on AMENDMENT: 2-5 ( Councilmember Whittum, Mayor Spitaleri, Councilmembers Chu, Howe, and Hamilton dissented)

AMENDMENT failed.

Councilmember Hamilton stated she will support the main motion; however, she encouraged the theatre groups to look into finding alternative rehearsal spaces.

Councilmember Howe stated he will support the motion; however, he will be making another motion after this motion is voted upon.

Councilmember Swegles stated since Council is not looking at other options, he will not support the motion.

Mayor Spitaleri stated will support the motion and is also in support of a downtown theatre and that is why he proposed a study issue for this possibility. He encouraged his colleagues to rank the study issue regarding a downtown theatre high enough in order approve studying during the next study issues workshop.

Restated MAIN MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded to approve Alternative 1: Maintain Sunnyvale Theatre's operating practices for scheduling as they currently exist with emphasis on operating and scheduling theatre to maximize attendance and revenue.

VOTE: 6-1 (Councilmember Swegles dissented)

MOTION: Councilmember Howe moved and Vice Mayor Moylan seconded to direct the Mayor or the city manager to send to each one of the school districts a letter expressing the Council's desire to encourage them to work with the two theater groups to find facilities within the schools for rehearsal spaces more appropriate than concrete and linoleum floors.

Councilmember Hamilton requested to add to the motion to include other facilities within the City such as churches with stages. Councilmember Howe declined to accept the amendment.

VOTE: 7-0

**3. RTC 09-249 Consider Municipal Code Revisions to Allow for the Filtering of "Gray Water" and the reuse of Filtered Gray Water for Household Purposes (Study Issue)**

Director of Public Works Marvin Rose presented the staff report.

Councilmember Whittum verified with Director Rose that a resident wishing to install a gray water system would currently do so according to the emergency-enacted California Plumbing Code, which does not require a permit for a closed-washer system or a single-fixture system. Rose stated this is the area staff would like to provide guidance.

Public hearing opened at 9:10 p.m.

Michael Flores requested a group be assembled to collect information and ideas as to what chemicals could be used that for a gray water system which would not degrade or contaminate the groundwater system. Flores requested once that information is gathered, that it be distributed to the community.

Dan Hafeman stated he would like to put in a system but he needs guidelines as to what he could put in place. Hafeman stated there also needs to be an educational component and outreach to the community regarding the benefits of filtering gray water. Hafeman encouraged Council to keep the momentum going on this subject.

Public hearing closed at 9:15 p.m.

Councilmember Whittum verified with Director Rose that staff is recommending Council not take action now unilaterally while the county is currently working on coming up with guidance for gray water systems. Once there is a uniform system throughout the county, the City will move forward on this issue and distribute information to the community.

Councilmember Whittum inquired about the time line for developing the guidance and Director Rose responded that it will probably be complete within 180 days. Should the county complete the guidelines sooner; staff will bring this information forward to Sunnyvale residents. Director Rose explained the Valley Water District requested a working group as they have groundwater to protect and have some concerns. Director Rose stated there are some real issues that need to be addressed; however, he thinks they can easily be addressed and staff will be able to offer guidance to the City's residents.

MOTION: Councilmember Swegles moved and Councilmember Howe seconded to approve Alternative 2: Take no action at this time. Reconsider this issue following staff's participation in the Santa Clara County Graywater Working Group, toward development of a model ordinance to include, nominal permitting requirements, as well as potential design guidance for homeowners and comments on the emergency building standards modifications. Staff to return to Council with recommendations related to the model ordinance.

VOTE: 7-0

**4. RTC 09-242 Consider Use of Hendy Iron Man Museum for a Cultural Amenity  
– Phase II (Study Issue)**

Director of Community Services David Lewis presented the staff report.

Councilmember Whittum verified with Director Lewis that Northrop Grumman is working independently with the City on issues of their expansion and wanted the freedom to not be tied to wherever the museum is located.

Councilmember Whittum verified with City Manager Luebbers that Northrop Grumman is anticipating substantial growth based on contracts they recently received and they are looking at how they will accommodate the added employees and parking. City Manager Luebbers stated he is not aware that Northrop Grumman is attempting to do any type of exchange with the City for the museum.

Public hearing opened at 9:24 p.m.

Tara Martin-Milius, Vice Chair of the Art Commission, stated the commission voted to 4-0 with one commissioner absent, to recommend approval of Alternative 1, which would conclude the study. Based on information received from Northrop Grumman, they are not currently in a position to commit to a museum based on their projected growth,

Public hearing closed at 9:26 p.m.

**MOTION:** Vice Mayor Moylan moved and Councilmember Swegles seconded to approve Alternative 1: Conclude this study based on the information from Northrop Grumman stating they are not in a position to commit to a museum facility on their campus at the present time **including** the clarification that should Northrop Grumman ever change its mind, the City will reinstate the possibility of a museum.

Vice Mayor Moylan stated he is concerned over the viability of the smaller museums throughout the City. Consolidation of these museums into one was the goal of this study issue but for the present time, that option is not available. Vice Mayor Moylan stated should that option ever open up again, then the City should move forward. If citizens have ideas on how to save the small museums throughout the City, Vice Mayor Moylan asked members of the public bring those ideas forward to Council.

VOTE: 7-0

5.     **ORDINANCE**                   **Ordinance Amending Chapter 3.16 (Transient Occupancy Tax) of**  
       **RTC 09-244**                   **Title 3 (Revenue and Finance) of the Sunnyvale Municipal Code**  
                                      **Related to Payment of Assessed Taxes Required Prior to Legal**  
                                      **Action**

City Attorney David Kahn provided the staff report.

Councilmember Swegles inquired how the City can monitor the online hotel reservation systems. City Attorney Kahn stated the City requires online providers to perform self audits and provide information to the City regarding the amount that they have billed. The City is currently in litigation to recover a number of taxes that are due from online providers and it is hopeful that the resolution from this litigation will provide a mechanism for both the recording and audit of the reporting results.

Public hearing opened at 9:30 p.m.

Michael Flores questioned why the City is holding the online travel services responsible when it is the local hotel receiving the customer. Flores stated it seems the hotel should bear the responsibility to pay the tax to the City. Flores stated the current litigation the City has against the online providers should include that the City will pay penalties and interest charged to the online reservation services should the City lose their case.

Councilmember Hamilton explained that when an online provider sells a hotel room, they are supposed to pay the City Transient Occupancy Tax (TOT) on what their customer paid for the room; however, they are only paying the City tax on what they paid the hotel for the room, not what they charged the customer, which is a higher amount. The online reservation system collects from the customer the proper TOT amount based on their sales price, but then only submits to the City tax on what they bought the room for from the hotel. City Attorney Kahn added that since the hotel does not receive income that would support the additional tax; therefore, the City needs to pursue the online companies, not the hotels.

Public hearing closed at 9:35 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1: Adopt Ordinance Amending Chapter 3.16 (Transient Occupancy Tax) of Title 3 (Revenue and Finance) of the Sunnyvale Municipal Code By Adding Section 3.16.170 Requiring Payment of Assessed Taxes Prior to Legal Action.

City Clerk Kathleen Franco Simmons read the ordinance title for the record.

VOTE: 7- 0

**6. RTC 09-239 Revisiting Definition of “Study Issue”**

Assistant City Manager Robert Walker presented the staff report.

Councilmember Chu verified with City Manager Luebbbers that this item would allow the city manager to have the discretion to move some study issues forward quickly and not require them to go through the extended study issue process. City Manager Luebbbers explained that some items do not need to go through the lengthy study issue process and this change might allow more time for significant study issues.

Mayor Spitaleri verified with City Manager Luebbbers that no study issue will be removed, rather it will either be placed on the traditional study issue path which goes before Council for ranking or the city manager may use his discretion to move a shorter study issue forward, forgoing the annual study issue process.

Public Hearing opened at 9:40 p.m.

No speakers.

Public hearing closed at 9:40 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded to approve Alternative 2: Reinstate the original concept behind the creation of the study issues process - defer prioritization of complex study issues until the annual workshop, thereby allocating staff resources after discussion and ranking of all complex issues - and defer to the city manager in determining what may be addressed outside of the study issue process, to give the city manager flexibility to determine when an item will not take enough time to warrant forcing it through the study issue process.

Vice Mayor Moylan stated he has been requesting that Council grant this ability to the city manager for quite some time. Vice Mayor Moylan stated there have been several times when he proposed something for the study issue process, which would have been a quick item to review; however, as a study issue item, it has an automatic year delay waiting for the annual study issue process to occur.

VOTE: 7-0

**7. COUNCIL                      Discussion and Possible Action regarding Downtown  
DISCUSSION                Association's Wednesday Night Jazz Series**

Councilmember Howe provided the background as to why he requested this item be placed on the agenda. Councilmember Howe stated the Jazz Series is a definite enhancement to downtown, but is just getting started and needs support. Councilmember Howe stated this series needs some minor support from the Council for next year's series starting in March to assist with promoting the downtown.

Public Hearing opened at 9:44 p.m.

Joel Wyrick, Sunnyvale Downtown Association, stated he appreciates the City looking at this music series. Wyrick thanked City staff for keeping the association well informed on the construction occurring on Murphy Avenue.

Councilmember Howe verified with Wyrick that there were eight jazz performances during the series this summer. Councilmember Howe inquired if the association made or lost money on the jazz series. Wyrick responded that the association lost money as an organization, but the local businesses did well. Wyrick explained that all the restaurants in and around Murphy Street were featured during the jazz series in place of food vendors.

Councilmember Swegles inquired if the association is looking at holding some type of event over at the Plaza during the construction. Wyrick stated they have looked at that option; however, fall and winter weather can become an issue.

Mayor Spitaleri thanked Wyrick for coming up with creative events to draw the public to the downtown area.

Councilmember Whittum inquired about the financial aspects of eight jazz performances. Wyrick stated the only source of revenue for the jazz series was one sponsor and beverage sales. Wyrick explained that because of the down economy and this being a brand new event, not much was received from the sponsor which left the event dependent on beverage sales, which averaged \$700 per event. Wyrick stated the stage and band were approximately \$1,000 alone plus there were additional costs for public safety officers and table and linen rentals.

Councilmember Whittum verified with Wyrick that event attendance was approximately 300 per event, which included fully rented tables plus the additional restaurant café seating. The unfortunate part of the event-tables was that no turn-over at the tables occurred.

Jessica Salans spoke in support for getting the Sunnyvale community to come downtown and expressed her support for events such as the jazz series, theatre, museums, and small restaurants to enhance the local experience for those who live here. Salans commented on for broadening the idea of the downtown.

Public hearing closed at 9:55 p.m.

MOTION: Councilmember Howe moved and Councilmember Chu seconded to subsidize the Saturday Night Jazz Series for up to 10 different events, for up to \$1000 per event.

Councilmember Howe explained that the downtown is under construction and Council needs to find a way to bring the community back together and to the downtown. Councilmember Howe stated the City's support of this event is not to exceed one year.

Councilmember Chu stated the City needs to support the small businesses as the downtown goes through the construction phase and this event support is a minor way in which the City can help the merchants. Councilmember Chu encouraged his colleagues to support the motion.

Councilmember Hamilton questioned Councilmember Howe as to where funding for this event will be found. City Manager Luebbers responded that currently staff specifically does not know where the money will be found but suggested that staff first look at programs where funds remain. City Manager Luebbers stated if Council directs that the funding first be located, then he can provide a more definite answer.

Councilmember Hamilton stated there is time to look at this issue during the next budget session. Councilmember Hamilton stated she is not comfortable trying to budget on the spot and find \$10,000 within the current budget. Councilmember Hamilton stated she will not support the motion.

Councilmember Whittum requested clarification on the motion as to whether it relates to the Jazz Series on Murphy. Councilmember Howe requested the City Clerk read the motion back to Council. City Clerk Franco Simmons read the motion back as requested. Councilmember Howe amended the motion to include Murphy Avenue, as that was his intent.

Amended MOTION: Councilmember Howe moved and Councilmember Chu seconded the motion to subsidize the Saturday Night Jazz Series on Murphy Avenue, for up to 10 weeks of events, at up to \$1000 per event, not to exceed one year of support.

Vice Mayor Moylan verified that City support will start when the Downtown Association starts the series up again next summer. Last year eight concerts were held and this assistance will allow the number of concerts to expand up to ten; however, the assistance is for \$1,000 per event held, not a lump sum.

Vice Mayor Moylan suggested this request become a budget item, because the budget will be addressed prior to the series starting next summer.

Councilmember Howe stated he will not be on the Council next year and he would like to see this move forward while he is still on the Council. Councilmember Howe inquired as to what would happen if the budget was not adopted in time before the series started to operate. City Manager Luebbbers explained that this financial request will go into the budget and will end up with the same result.

Councilmember Whittum stated he agrees with Councilmember Hamilton that this item should be made a budget item and will make a formal amendment. City Manager Luebbbers clarified that Vice Mayor Moylan was requesting to direct the city manager to include this item in the budget if approved this evening, and Councilmember Whittum and Hamilton are requesting that the item be considered as a budget item. Councilmember Whittum agreed that his amendment was to place this item as a budget item to be ranked during the budget workshop.

FORMAL AMENDMENT: Councilmember Whittum moved and Councilmember Hamilton seconded to make this matter a budget issue.

Councilmember Whittum stated he would like to take time to reflect on this item during the budget workshop and will not make a quick decision. Councilmember Whittum stated it is part of the budget process to rank all items at once.

Councilmember Hamilton stated she agreed with Councilmember Whittum and that the City has a budget process for a reason. The temptation to approve items outside of that process is too great. Even during the budget process, Council may discuss very worthy items requesting lesser amounts at great length; therefore it does not make sense nor seem fair to spot budget this item. Councilmember Hamilton stated this item should be included in the regular budget process.

VOTE on AMENDMENT: 2-5 (Councilmember Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu and Howe dissented)

FORMAL AMENDMENT failed.

Mayor Spitaleri expressed his support for this item as it is a good thing for the community and the downtown businesses. Mayor Spitaleri stated he is confident the city manager will be able to find funding and suggested the savings realized by the State of the City event be considered as a possible revenue source.

Restated Amended MOTION: Councilmember Howe moved and Councilmember Chu seconded the motion to subsidize the Saturday Night Jazz Series on Murphy Avenue, for up to 10 weeks of events, at up to \$1000 per event.

VOTE: 5-2 (Councilmembers Whittum and Hamilton dissented)

**8. COUNCIL                      Consider Sunnyvale's Position on Issue of Representation on Valley  
DISCUSSION                  Transportation Authority Board**

Councilmember Chu stated he requested this item be placed on the agenda because he is a member of Santa Clara Valley Transportation Authority (VTA). Councilmember Chu presented his report for discussion.

Public Hearing opened at 10:21 p.m.

Michael Flores spoke about concerns over the qualifications on page 9 of the report which requires that anyone interested in serving on the board must be an incumbent. Flores stated he views that requirement as a self-serving requirement and does not feel it is a necessary qualification.

Public hearing closed at 10:23 p.m.

Councilmember Hamilton verified with Councilmember Chu that the Civil Grand Jury made the recommendation that a qualification is to have a directly-elected board member, but the VTA staff did not make this same recommendation.

Councilmember Hamilton inquired of Councilmember Chu regarding the changes being proposed. Councilmember Hamilton identified that the City of Milpitas is in favor of a regrouping cities and the West Valley Group has endorsed that staff recommendation.

Councilmember Chu explained to Councilmember Hamilton that VTA requested each grouping come up a methodology for selecting their own board members. The grouping that the City of Sunnyvale is involved with includes the City of Santa Clara, City of Palo Alto, City of Mountain View, and the City of Los Altos Hills.

Councilmember Hamilton questioned who from the City of Sunnyvale meets with the other cities to determine who the board members are and Councilmember Chu verified it was the City-appointed representative since there is currently not a VTA board member.

Mayor Spitaleri stated he sent a letter in 2008 to VTA and has not received any correspondence regarding any concerns. Mayor Spitaleri inquired how Councilmember Chu has knowledge of what the other cities are in favor. Councilmember Chu responded in preparation for tonight, he polled the other cities to find out what their position or policy is toward reorganization. Councilmember Chu explained that the City of Sunnyvale is the first City to have this item on their agenda. Mayor Spitaleri stated he was under the impression the City's position was decided by the Council in 2008. Councilmember Chu agreed and explained that this discussion is for the purpose of reconsidering the City's position based on additional information.

Mayor Spitaleri inquired as to how this became an issue and Councilmember Chu explained that this discussion started in 2007 during the organizational study for VTA. After Mayor Spitaleri took a position for the City in 2008, VTA sent a letter in August 2009, after the Administrative and Finance committee, asking the City what it wants to do about the issue that Morgan Hill and Gilroy would not be selecting the City of Milpitas as the leader of their grouping. Mayor Spitaleri explained to Councilmember Chu that the City has already responded with the City's position in the letter that Mayor Spitaleri sent in 2008. Councilmember Chu stated the letter from VTA dated August 2009 is new.

Vice Mayor Moylan stated this is not new information, rather it is a continuation of the proposal from the City of Morgan Hill to reorganize the City groupings in order to give Morgan Hill and Gilroy permanent seats on the board, even though their populations do not justify such action.

Vice Mayor Moylan stated that on September 4, 2009, the north cities grouping, of which Sunnyvale is a member, met and discussed the possibility of allowing the six cities in the grouping the ability to elect their board members and to change the experience criterion, making it optional and not mandatory. After election day in November, each of the six cities will select which councilmember they would like to be their nominee and in December the north cities grouping will select the three board members and an alternate.

Vice Mayor Moylan explained that the other issue being brought back to Council for reconsideration is the city's opposition to the south county proposal to create a permanent board seat for Morgan Hill and Gilroy at the expense of the north county grouping. If any change to the groupings were to occur, a proposal would need to be circulated to the cities identifying the new groupings with a request of support or rejection by each city. There would need to be a majority of support in order for the new groupings to occur.

Vice Mayor Moylan explained that with the new process being approved by the north county cities grouping, the 80 percent representation the City of Sunnyvale has had over the last ten years will likely improve to 100 percent. City votes are weighted by population and Sunnyvale is the largest of the north county cities grouping. Vice Mayor Moylan explained that the proposal from Morgan Hill for regrouping would put the City of Sunnyvale in a grouping of three cities with two seats, which would drop Sunnyvale's representation down to 67 percent.

Vice Mayor Moylan stated that Council is being asked to reconsider the City's lack of support to remove representation from the City and transfer it to the cities of Gilroy and Morgan Hill. Vice Mayor Moylan offered reasons why the City should still oppose this action. The reasons include:

- The City has just succeeded in establishing a new protocol that is likely to increase the City's representation and the City should not change that now before it has even happened.
- Citizens have requested that Sunnyvale have more influence regarding mass transit and decreasing representation on the board, as what would occur with the City of Gilroy proposal, will not achieve this goal requested by the citizens of Sunnyvale.
- City groupings with three cities in them can be dysfunctional because if two cities routinely vote against the other city, it does not matter if their population is greater as they would be constantly outvoted two to one.

- No new city grouping should be set up and Sunnyvale should not walk into a grouping with only three members. Even with the percentage of representation that the City of Sunnyvale would have with the proposed grouping, they could continue to be shut out if the other two cities continued to vote in opposition.
- The idea that a citizen of Gilroy or Morgan Hill should have twice the representation that a citizen of Sunnyvale has on the VTA board is not correct.

Vice Mayor Moylan stated Council discussed this issue previously at length. This proposal from south county continues to be voted against over and over. Vice Mayor Moylan explained that if VTA were to request to change the Joint Powers Agreement and move forward in bringing this issue before cities, then at that point, it would be an issue that Council should definitely fight against on behalf of the Sunnyvale citizens.

Vice Mayor Moylan stated there should not be any change to the City's policy on this issue at this time.

Councilmember Hamilton questioned why Sunnyvale would not want to work with the City of Milpitas if this is a regional board. Councilmember Hamilton stated the City of Sunnyvale has a lot more similar transit issues with the proposed cities than the cities they are currently connected with in the north county.

Vice Mayor Moylan stated that Sunnyvale works with Milpitas and all VTA board members have a fiduciary responsibility to do what is best for the region as a whole. The new change is a real improvement over the previous rotation system used. Vice Mayor Moylan stated Councilmember Hamilton's question is a really good argument for doing away with groupings; however, that is not an option on the table presently. City groupings were done arbitrarily and given that fact, Vice Mayor Moylan questioned why Sunnyvale would go into a grouping with less representation for Sunnyvale residents.

Councilmember Hamilton responded that Sunnyvale is in a grouping with other cities that do not have the same transportation issues as Sunnyvale.

Vice Mayor Moylan responded that the City of Sunnyvale has some things in common and not in common with most cities. Sunnyvale has had to get by without representation at times, such as now, with Vice Mayor Moylan serving as an alternate only. The City has had to rely on and trust other cities to represent Sunnyvale's best interests. The new change will allow Sunnyvale to vote on who they think will best represent their interests on the board; however, that ability would not be available if Sunnyvale were part of a three city grouping.

Councilmember Chu explained that all three cities will have representation 100 percent of the time, because there would be two representatives and one alternate. Whereas, with the north county grouping this is not the case because there are six cities with three board members and two alternates, which puts two cities out. It is possible that Sunnyvale would have a seat on the board, but it is not guaranteed.

Councilmember Chu stated that Sunnyvale would not serve on the board any more or less by going into either grouping.

MOTION: Councilmember Moylan moved and Councilmember Whittum seconded to take

no action and leave current policy intact.

Vice Mayor Moylan stated there is no advantage to the south county proposal, only an obvious disadvantage. The hidden agenda behind this proposal is not the City of Sunnyvale's agenda.

Councilmember Howe verified with Vice Mayor Moylan that the City is roughly one-quarter the size of the total population of the six cities involved in the north county city grouping and it would be unclear as to whether there would be proportional voting with the south county proposal.

Councilmember Chu stated he opposes the motion as he does not feel Sunnyvale would be harmed with either grouping and in fact the issues of Sunnyvale more closely match the issue of Santa Clara and Milpitas. Councilmember Chu stated the south county proposal is not an attempt to gain power, rather it is an issue of knowing the regional issues in a region and that is the reason that Council should at least be willing to have further discussion

VOTE: 4-1 (Councilmember Chu dissented and Councilmembers Howe and Hamilton abstained)

Councilmember Hamilton stated she abstained because she does not feel she had enough information to make an informed decision.

Councilmember Howe stated he chose to abstain for similar reasons as Councilmember Hamilton and when he does not fully understand an issue, he will not vote one way or the other.

#### **COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS**

Councilmember Swegles announced an upcoming information meeting and discussion in Mountain View for the Peninsula Division in regard to retirement issues based on a report the local city managers have put together. Councilmember Swegles encouraged his fellow Councilmembers to attend this meeting. Councilmember Hamilton added that the Cities Association voted to endorse the white paper that the city manager's association put together regarding retirement.

Councilmember Hamilton stated City Association, City Selection committee reappointed Jamie McCloud and Curtis Wright from Monte Serreno to the County Recycling and Waste Commission.

## **NON-AGENDA ITEMS & COMMENTS**

**COUNCIL:** Councilmember Howe stated the Roster of Elected and Appointed Officials has not been updated for quite some time and he requested staff respond back as to whether the roster will be updated and continue to be distributed, or if staff has stopped producing the document.

Councilmember Howe asked for the status on the appeal of Club LaRhonda and when it is scheduled to go before the Planning Commission.

Vice Mayor Moylan stated nine years ago he met Mountain View Councilmember Rosemary Stasek who taught him how to give a great speech. Vice Mayor Moylan stated that after serving as a Councilmember for the City of Mountain View, Stasek went to Afghanistan to help the situation over there and she stayed. Vice Mayor Moylan stated he was very saddened to learn that last week Stasek passed away from health-related issues and he did not want her passing to go without mention for all the good that she did both in Mountain View and in Afghanistan.

**STAFF:** None.

## **INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
  - Draft Minutes of Arts Commission Meeting of August 19, 2009
  - Draft Minutes of Parks and Recreation Commission Meeting of September 9, 2009
  - Draft Minutes of Board of Library Trustees Meeting of September 14, 2009
  - Draft Minutes of Housing and Human Services Commission Meeting of August 26, 2009
  - Draft Minutes of Heritage Preservation Commission Meeting of September 2, 2009
  - RTC 09-250 Opportunity for Council to Appeal Decisions of the Planning Commission of September 14, 2009 and the Administrative Hearing of September 16, 2009
- RTC 09-251 Board and Commission Resignation (Information Only)

## **ADJOURNMENT**

Mayor Spitaleri stated the meeting will be closed in honor of a special person and turned the floor over to Councilmember Swegles. Councilmember Swegles stated the meeting will be closed this evening in honor of his son-in-law, Tim McCullough, who passed away on September 25 after a long battle with cancer.

Mayor Spitaleri called for a moment of silence for both Rosemary Stasek and Tim McCullough

Mayor Spitaleri adjourned the Council meeting 11:09 p.m.

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Kathleen Franco Simmons  
City Clerk

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Date

*\*Approved by Council October 20, 2009*